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June 29, 1998

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JUN 29 1998

BY HAND DELIVERY

Ms. Magalie R. Salas, Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: In the Matter of
Amendment of Section 73.202(b)
Table of Allotments
FM Broadcast Stations
Manistique, Michigan
File No.: ; RM-

Dear Ms. Salas:

Transmitted herewith on behalf of Roy E. Henderson d/b/a Indian River Broadcasting Company are an original and four (4) copies of its "Petition for Rulemaking" as directed to the Chief, Allocations Branch.

Should any additional information be required, please contact this office.

Very truly yours,



Henry E. Crawford
Counsel for
Roy E. Henderson d/b/a Indian
River Broadcasting Company

cc: Chief, Allocations Branch

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.202(b)
Table of Allotments
FM Broadcast Stations
Manistique, Michigan

MM Docket No. _____
RM- _____

To: The Chief, Allocations Branch
Mass Media Bureau

PETITION FOR RULEMAKING

Roy E. Henderson d/b/a Indian River Broadcasting Company ("Indian River"), by counsel, hereby petitions the Federal Communications Commission for the initiation of a rulemaking proceeding to amend the FM Table of Allotments, Section 73.202 of the Commission's Rules, to make the following changes in the FM Table of Allotments:

Manistique, Michigan	260A	224A, 260A, 265A, 279A

In support thereof, the following is stated:

I. ARGUMENT

1. Indian River originally sought the allotment of Channel 260A to Manistique, Michigan. Manistique, Michigan, 12 FCC Rcd 2460 (Allocations Branch, 1997). On July 11, 1997, the Commission released a Report & Order adding the channel and establishing a filing window that opened on August 25,

1997 and closed on September 25, 1997. Manistique, Michigan, 12 FCC Rcd 9702 (Allocations Branch, 1997).

2. On September 25, 1997, Indian River filed an application for Channel 260A at Manistique (File No. BPH-970925MG). Two other competing applications were filed by Phillip J. Robbins ("Robbins", File No. BPH-970925MY), and Todd Stuart Noordyk, ("Noordyk", File No. BPH-970922ME).

3. Subsequently, on November 26, 1997, the Commission released Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, 12 FCC Rcd 22363 (1997). In Implementation of Section 309(j) of the Communications Act, the Commission suspended all new comparative licensing procedures and deferred action until the promulgation of new auction rules for competing applications.

4. In light of the long suspension of broadcast selection procedures, the Commission has afforded cut-off protection in order to resolve mutual exclusivity. See Point Arena, California, DA 98-1203, Released June 26, 1998 (Allocations Branch). As demonstrated in the Engineering Statement, attached hereto as Exhibit 1, several equivalent channels exist at Manistique, Michigan. Consequently, it is possible in this case to allocate a Class A FM Channel to each of the competing applicants while at the same time reserving a further channel to accommodate the needs of any other party seeking a Class A facility in Manistique. Accordingly, Indian River proposes that in order to eliminate the mutual exclusivity of the three Manistique applicants, the Commission permit

Robbins to modify his pending Manistique application to specify operation on Channel 224A and afford that application cut-off protection. Copeland Kansas, 5 FCC Rcd 7682 (1990). In addition, Channel 265A would be available to Noordyk for proposed operation and his application could be modified accordingly and afforded cut-off protection. Indian River would remain on Channel 260A and be afforded cut-off protection as well. Finally, Channel 279A would remain available for allocation at Manistique should there be any other parties expressing an interest for a channel in Manistique. See Roseburg, Oregon, 6 FCC Rcd 4369, ¶ 2 (1991).

5. Indian River submits that significant public interest reasons exist that warrant the grant of the instant proposal, including the institution of earlier first service to Manistique as well as the earlier institution of additional diverse voices in Manistique to be provided by Robbins and Noordyk. Albion, Nebraska, 10 FCC Rcd 11927 (1995).

6. To the extent either Robbins or Noordyk would be required to modify their technical proposals as a result of the channel change proposed herein, Indian River commits to reimburse the other applicants for such reasonable costs associated with the channel change as is consistent with the Commission's policies established in Cirdeville, Ohio, 8 FCC 2d 159 (1967).

7. For the reasons stated above, Indian River hereby petitions the Commission to make the following change in the FM Table of Allotments, Section 73.202(b) of the Commission's Rules:

Manistique, Michigan	260A	224A, ¹ 260A, ² 265A, ³ 279A ⁴

II. CONCLUSION

8. Allowing each party to have its own Manistique broadcast station promotes the public interest. Service will be provided much sooner than would be the case if the parties are required to wait for the Commission to promulgate and implement its new rules. The proposed resolution will also greatly decrease the Commission's administrative burden. The resolution is in line with Commission precedent and will result in an abundance of media voices in the community of Manistique, Michigan. Therefore, Indian River requests that the FM Table of Allotments be amended accordingly.

WHEREFORE, Roy E. Henderson d/b/a Indian River Broadcasting Company respectfully requests that the Commission amend the FM Table Of Allotments as indicated above.

June 29, 1998


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Respectfully Submitted,

Roy E. Henderson d/b/a Indian
River Broadcasting Company

By:


Henry E. Crawford
Its Attorney

¹ Reserved for Phillip J. Robbins.

² Reserved for Indian River.

³ Reserved for Todd Stuart Noordyk.

⁴ Allotment to accommodate any outside expression of interest.

Roy E. Henderson d/b/a Indian
River Broadcasting Company
Petition for Rulemaking
June 29, 1998

EXHIBIT 1

Indian River Broadcasting Company
Post Office Box 590209
Houston, Texas 77259

PETITION TO AMEND THE FM TABLE OF ALLOTMENTS
Manistique, Michigan
June 1998

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F. W. Hannel, PE
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STATE OF ILLINOIS)
)
COUNTY OF PEORIA) SS:

F. W. Hannel, after being duly sworn upon oath,
deposes and states:

He is a registered Professional Engineer, by
examination, in the State of Illinois;

He is a graduate Electrical Engineer, holding Bachelor
of Science and Master of Science degrees, both in Electrical
Engineering;

His qualifications are a matter of public record and
have been accepted in prior filings and appearances requiring
scrutiny of his professional qualifications;

The attached Engineering Report was prepared by him
personally or under his supervision and direction and;

The facts stated herein are true, correct, and
complete to the best of his knowledge and belief.

June 12, 1998



F. W. Hannel, P.E.

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Indian River Broadcasting Company
Post Office Box 590209
Houston, Texas 77259

PETITION TO AMEND THE FM TABLE OF ALLOTMENTS
Manistique, Michigan
June 1998

ENGINEERING STATEMENT

This firm has been retained by Indian River Broadcasting to prepare this Petition to Amend the FM Table of Allotments to afford all applicants for FM Channel 260A at Manistique, Michigan a class A channel so that all conflicts are removed in the proceeding involving three mutually exclusive applicants.

Indian River Broadcasting initially requested that the Commission allot FM Channel 260A to the Community of Manistique, Michigan, and subsequently it filed an Application For Construction Permit, FCC File No. BPH-970925MG. At the closing of the filing window two other applicants filed for the same channel; Phillip J. Robbins, FCC File No. BPH-970925MY, and Todd Stuart Noordyk, FCC File No. BPH-970922ME. Both applicants sought a Construction Permit for FM Channel 260A at Manistique, Michigan, along with Indian River Broadcasting.

The purpose of this Petition for Rulemaking is to afford both of the other applicants an alternate channel thereby removing all conflicts in the Construction Permit proceeding. In addition, Indian River Broadcasting seeks one additional assignment at Manistique, Michigan to accommodate any other party expressing an interest in filing an application for a Construction Permit at that community.

Indian River Broadcasting requests that it be awarded a Construction Permit on FM Channel 260A, as it has sought since the initiation of the rulemaking proceeding which resulted in the allotment of FM Channel 260A at Manistique, Michigan.

As an alternate channel assignment for Phillip J. Robbins, one of the applicants for FM Channel 260A at Manistique, Michigan, Indian River Broadcasting requests the assignment of FM Channel 224A to Manistique, Michigan. It is further requested that this channel be reserved for Phillip J. Robbins and that he retain cutoff protection as it

relates to his originally filed application, FCC File No. BPH970925MY. Attached as Exhibit E-1 is an FM Channel Study conducted on FM Channel 224A which clearly shows that FM Channel 224A can be assigned to Manistique, Michigan, at the applicants site, N45-58-09, W86-11-10.

As an alternate channel assignment for Todd Stuart Noordyk, Indian River requests that FM Channel 265A be assigned to Manistique, Michigan, and that FM Channel 265A be reserved for Todd Stuart Noordyk's use. Attached as Exhibit E-2 is an FM Channel Study which shows that FM Channel 265A can be assigned to Manistique, Michigan, at the applicants site, (FCC File NO. 970922ME), N45-57-51, W86-16-37. It is requested that this channel be reserved for Todd Stuart Noordyk, and that he retain cutoff protection so that his channel can be modified to specify operation on FM Channel 265A.

Since additional channels are being requested for Manistique, Michigan, it is possible that another party may express an interest in filing an application for the newly assigned channels. Should there be such an expression, it is requested that FM Channel 279A be reserved to accommodate that expression of interest.

In view of the foregoing, it is respectfully requested that the Commission amend the FM Table of Assignments as follows:

City	Present	Proposed
Manistique, Michigan	260A	224A ¹ , 260A ² , 265A ³ , 279A ⁴

¹ Reserved for Phillip J. Robbins

² Reserved for Indian River Broadcasting

³ Reserved for Todd Stuart Noordyk

⁴ Allotment to accommodate any outside expression of interest, if any.

Indian River Broadcasting Company
Post Office Box 590209
Houston, Texas 77259

PETITION TO AMEND THE FM TABLE OF ALLOTMENTS

Manistique, Michigan
June 1998

FM CHANNEL 224A

N45-58-05

W86-16-24

CALL	CITY	ST	CHN	CL	S	DIST	SEPN	BRNG	CLEAR
ALC	Ishpeming	MI	222	C1	U	111.2	75.0	303.1°	36.2
WJPD	Ishpeming	MI	222	C1	L	111.2	75.0	303.1°	36.2
ALC	Sault Ste Marie	ON	225	B		161.6	149.0	67.8°	12.6

All distances in Kilometers

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PETITION TO AMEND THE FM TABLE OF ALLOTMENTS
Manistique, Michigan
June 1998

FM CHANNEL 265A
N45-57-51
W86-16-37

CALL	CITY	ST	CHN	CL	S	DIST	SEPN	BRNG	CLEAR
ALC	Crystal Falls	MI	264	C1	U	160.7	133.0	274.7°	27.7
WAQJ	Crystal Falls	MI	264	C1	C	161.3	133.0	274.7°	28.3
ALC	East Jordan	MI	265	A	U	127.1	115.0	134.8°	12.1
WIZY	East Jordan	MI	265	A	L	126.9	115.0	133.6°	11.9

All distances in Kilometers

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Houston, Texas 77259

PETITION TO AMEND THE FM TABLE OF ALLOTMENTS
Manistique, Michigan
June 1998

FM CHANNEL 279A
N45-57-24
W86-14-48

CALL	CITY	ST	CHN	CL	S	DIST	SEPN	BRNG	CLEAR
ALC	Marquette	MI	277	C1	U	113.4	75.0	303.2°	38.4
WFXD	Marquette	MI	277	C1	L	113.4	75.0	303.2°	38.4
ALC	Traverse City	MI	278	C	U	171.9	165.0	165.5°	6.9
WTCMFM	Traverse City	MI	278	C	L	171.9	165.0	165.5°	6.9
ALC	Menominee	MI	279	C3	U	152.5	142.0	231.7°	10.5
WHYB	Menominee	MI	279	C3	L	148.6	142.0	228.3°	6.6
ALC	Harbor Springs	MI	280	C2	U	112.7	106.0	117.8°	6.7
WCMWFM	Harbor Springs	MI	280	C2	L	107.4	106.0	118.0°	1.4

All distances in Kilometers

CERTIFICATE OF SERVICE

I, Henry E. Crawford, do hereby certify that copies of the foregoing Petition for Rulemaking have been served by United States mail, postage prepaid this 29th day of June, 1998 upon the following:

*Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
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*Hand Delivered


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